

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
Implementing a Nationwide, Broadband, Interoperable Public Safety Network in the 700 MHz Band)	PS Docket No. 06-229
)	
)	
Development of Operational, Technical and Spectrum Requirements for Meeting Federal, State and Local Public Safety Communications Requirements Through the Year 2010)	WT Docket No. 96-86
)	
)	
Request for Waiver of Pierce Transit)	

ORDER

Adopted: January 17, 2008**Released: January 17, 2008**

By the Chief, Public Safety and Homeland Security Bureau:

I. INTRODUCTION

1. On July 31, 2007, the Commission adopted a *Second Report and Order* revising the rules governing the 700 MHz band.¹ In the *Second Report and Order*, the Commission redesignated ten megahertz of public safety 700 MHz spectrum (763-768/793-798 MHz) for the purpose of establishing a nationwide, interoperable broadband public safety communications network. In order to accommodate this broadband allocation, the Commission consolidated the public safety narrowband channels so that they are located at 769-775/799-805 MHz.² Subject to certain conditions and limitations, the Commission determined that the Upper 700 MHz Band D Block licensee will pay the costs associated with relocating public safety narrowband operations to the consolidated channels.³ To facilitate the relocation process, and clearly define the costs that would be entitled to reimbursement, the Commission required every 700 MHz band public safety licensee, whether holding individual narrowband authorizations or operating pursuant to a State License, to certify the number of narrowband mobile and portable handsets and base stations serving these handsets in operation as of August 30, 2007 (30 days following adoption of the *Second Report and Order*).⁴ The Commission also prohibited authorization, whether pursuant to individual license or State License, of any new narrowband operations outside of the consolidated channels as of August 30, 2007, and cautioned that any equipment deployed outside of the consolidated channels after August 30, 2007 would be ineligible for relocation funding.⁵

¹ Implementing a Nationwide, Broadband, Interoperable Public Safety Network in the 700 MHz Band; Development of Operational, Technical and Spectrum Requirements for Meeting Federal, State and Local Public Safety Communications Requirements Through the Year 2010, PS Docket No. 06-229, WT Docket No. 96-86, *Second Report and Order*, 22 FCC Rcd 15289 (2007) (*Second Report and Order*).

² *Id.* at ¶ 329.

³ *Id.* at ¶ 336.

⁴ *Id.* at ¶¶ 336-337.

⁵ *Id.* at ¶ 339.

2. On August 30, 2007, Pierce Transit (Pierce Transit) requested waiver relief concerning narrowband operations outside of the consolidated channels.⁶ Pierce Transit requests waiver of the following provisions of the *Second Report and Order*: (1) the prohibition on authorization of new narrowband operations outside the consolidated channels as of August 30, 2007; (2) the limitation on cost reimbursement to equipment that was in operation as of August 30, 2007, to allow Pierce to remain eligible for relocation funding for reconfiguration costs for portions of its system purchased but not installed by the August 30, 2007, deadline; and (3) the requirement that public safety entities submit certifications of narrowband equipment in operation as of August 30, 2007, to allow Pierce to certify all equipment it expects to deploy after August 30, 2007.⁷ For the reasons discussed below, we grant the Waiver Request in part on a limited basis, and defer action on the Waiver Request in all other respects.

II. DISCUSSION

3. As an initial matter, we note that after filing its waiver, Pierce Transit filed a Petition for Reconsideration on September 24, 2007.⁸ In its Petition, Pierce Transit includes among its requested relief the same relief it seeks in its Waiver Request.⁹ While the pleading cycle with respect to the Petition has closed, we do not address in this Order the merits of the Petition as we have not yet completed our review of the record. In the interests of public safety, however, we provide Pierce Transit limited waiver relief of the prohibition on new narrowband operations outside of the consolidated channels after August 30, 2007. As further explained below, the Commission will determine the duration of such relief, and whether Pierce Transit is entitled to reimbursement for relocation of equipment installed after August 30, 2007, after fully considering the Petition and associated public record.

4. Section 1.925 states that to obtain a waiver of the Commission's rules, a petitioner must demonstrate either that: (i) the underlying purpose of the rule(s) would not be served or would be frustrated by application to the present case, and that a grant of the requested waiver would be in the public interest; or (ii) in view of unique or unusual factual circumstances of the instant case, application of the rule(s) would be inequitable, unduly burdensome or contrary to the public interest,¹⁰ or the applicant has no reasonable alternative.¹¹ An applicant seeking a waiver faces a high hurdle and must plead with particularity the facts and circumstances that warrant a waiver.¹²

5. On November 14, 2007, the Commission adopted and released an Order that granted the Commonwealth of Virginia, Virginia State Police (Virginia) limited interim waiver relief to enable Virginia to continue to deploy new narrowband outside of the consolidated narrowband channels.¹³ In

⁶ Letter from Lynne Griffith, Chief Executive Officer, Pierce Transit, to Derek Poarch, Chief, Public Safety and Homeland Security Bureau, FCC, filed Aug. 30, 2007 (Waiver Request).

⁷ *Id.*; Letter from Lynne Griffith, Chief Executive Officer, Pierce Transit, to Derek Poarch, Chief, Public Safety and Homeland Security Bureau, FCC, filed Sept. 5, 2007 (Supplement).

⁸ Petition for Reconsideration, PS Docket No. 06-229, WT Docket No. 96-86 (filed Sept. 24, 2007) (Petition).

⁹ *Id.* at 11-12. The Commission released a Public Notice listing the filing of the Petition, and other petitions for reconsideration, on September 27, 2007. *See* Petitions for Reconsideration and Clarification of Action in Rulemaking Proceeding, Report No. 2833, *Public Notice* (rel. Sept. 27, 2007). The Public Notice was published in the Federal Register on October 2, 2007, establishing dates for the filing of oppositions (October 17, 2007) and replies to oppositions (October 29, 2007).

¹⁰ 47 C.F.R. § 1.925(b)(3)(i).

¹¹ 47 C.F.R. § 1.925(b)(3)(ii).

¹² *See WAIT Radio v. FCC*, 418 F.2d 1153, 1158-59 (D.C. Cir. 1969), *aff'd*, 459 F.2d 1203 (D.C. Cir. 1972); *Northeast Cellular Tel. Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990).

¹³ Implementing a Nationwide, Broadband, Interoperable Public Safety Network in the 700 MHz Band; Development of Operational, Technical and Spectrum Requirements for Meeting Federal, State and Local Public Safety Communications Requirements Through the Year 2010, PS Docket No. 06-229, WT Docket No. 96-86, *Order*, FCC 07-195 (rel. Nov. 14, 2007) (*Virginia Order*).

this Order, the Commission found that it is in the public interest to “provide interim waiver relief for continued deployment outside of the consolidated narrowband channels where there has been a showing of potential public harm and there is evidence of a comprehensive 700 MHz deployment plan that predates August 30, 2007 for which equipment has been received and/or deployed.”¹⁴ We next examine whether Pierce Transit satisfies these criteria.

6. In its Waiver Request, Pierce Transit claims that the public will be harmed if it is unable to continue to deploy additional narrowband operations beyond August 30, 2007. Pierce Transit states that it has deployed a 700 MHz narrowband radio system, which is operational at three sites; three other sites are to be completed and operational by the end of October 2007; and deployment of more than 650 mobile and portable radios is scheduled between November 2007 and June 2008.¹⁵ Pierce Transit adds:

The safety of our 16,000,000 annual riders and 900+ operators and employees is dependant on maintaining reliable communications with our vehicles and field supervisors. Pierce Transit is also a lead agency in Pierce County’s emergency response plan. Our ability to participate with other first responders in the event of a natural disaster or other emergency could be compromised by delays to this project.¹⁶

7. Accordingly, we find that Pierce Transit has made a sufficient showing of “potential public harm,” based on its representation that its ability to respond to a public safety emergency would be compromised should it be unable to continue to deploy new narrowband operations outside of the consolidated narrowband channels. Further, Pierce Transit states that its 700 MHz radio system design was completed late in 2006, the entire system was made operational and tested in December 2006, and the equipment was programmed, shipped, and paid for by the end of December 2006.¹⁷ Thus, we also find that Pierce Transit has provided sufficient “evidence of a comprehensive 700 MHz deployment plan that predates August 30, 2007, for which equipment has been received and/or deployed.” Having satisfied the criteria established by the Commission in the *Virginia Order*, we find it to be in the public interest to grant Pierce Transit limited interim waiver relief to deploy new narrowband operations outside the consolidated bands following August 30, 2007, until the Commission rules on Pierce Transit’s Petition and the issues in this Waiver Request that we are deferring.

8. We defer ruling on the continued duration of this limited waiver relief, and whether Pierce Transit would be entitled to cost reimbursement for any new narrowband operations deployed following August 30, 2007, until the Commission rules on Pierce Transit’s Petition. Accordingly, our decision to permit Pierce Transit to continue to place new narrowband radios into operation after August 30, 2007 is without prejudice to the Commission’s subsequent ruling on these outstanding waiver issues – including whether Pierce Transit would be entitled to reimbursement for the costs associated with relocating any additional narrowband operations outside of the consolidated narrowband channels that Pierce Transit deploys after August 30, 2007, and on its Petition. To the extent, however, that Pierce Transit is able to deploy in the consolidated bands and avoid the need for relocation, we encourage it to do so. Such deployment would eliminate any future disruptions to operations due to the need to relocate, and would reduce the overall cost of the relocation process.¹⁸

¹⁴ *Id.* at ¶ 7.

¹⁵ Waiver Request at 1.

¹⁶ *Id.* at 2.

¹⁷ *Id.* at 1-2.

¹⁸ To the extent that waiver of any Commission rules would be required to enable immediate deployment in the consolidated bands, such requests may be filed in accordance with the Commission’s waiver rules, 47 C.F.R. § 1.925. We also note that the Public Safety and Homeland Security Bureau recently advised that public safety entities in need of commencing operations in advance of Commission approval of a 700 MHz regional plan should file a request for Special Temporary Authority. See Public Safety and Homeland Security Bureau Reminds 700 MHz Regional Planning Committees of the January 31, 2008 Deadline to Amend 700 MHz Narrowband Plans and

III. ORDERING CLAUSES

9. Accordingly, IT IS ORDERED that pursuant to sections 1, 4(i), 301, 303, and 332 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 154(i), 301, 303, 332, and Section 1.925 of the Commission's rules, 47 C.F.R. § 1.925, THIS ORDER in PS Docket No. 06-229 and WT Docket No. 96-86 is ADOPTED.

10. IT IS FURTHER ORDERED that the Waiver Request filed by Pierce Transit on August 30, 2007 is GRANTED IN PART, and that action on the Waiver Request is DEFERRED IN ALL OTHER RESPECTS.

11. This action is taken under delegated authority pursuant to Sections 0.191 and 0.392 of the Commission's rules, 47 C.F.R. §§ 0.191, 0.392.

FEDERAL COMMUNICATIONS COMMISSION

Derek K. Poarch
Chief
Public Safety and Homeland Security Bureau